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C O N F I D E N T I A L SECTION 01 OF 02 KATHMANDU 001659

SIPDIS

STATE FOR SA/INS  
LONDON FOR POL - RIEDEL  
BEIJING PLEASE PASS CHENGDU  
GENEVA FOR RMA

E.O. 12958: DECL: 08/25/2012  
TAGS: PREF PHUM PREL NP IN CH  
SUBJECT: UPDATE ON STATUS OF TIBETAN REFUGEES DETAINED IN NEPAL

REF: KATHMANDU 1245 AND PREVIOUS

Classified By: DCM ROBERT K. BOGGS. REASON: 1.5 (B,D).

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FINES PAID; JAILED MOTHER  
AND CHILD ARE FREED  
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¶1. (SBU) On August 22 a German philanthropist paid Nepal's Department of Immigration approximately USD 1500 in assorted fees and penalties to secure the release of a Tibetan refugee, detained since August 2001 for having re-entered Nepal without proper documentation (Reftel), and her baby, born in detention in February. The Department of Immigration turned over the woman and child to UNHCR. The Tibetan Reception Center is currently making arrangements for the pair's onward travel to India.

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COURT RULING REDUCES FINES  
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¶2. (U) On the same day an appellate court in Kathmandu ordered the Department of Immigration to explain why it had levied visa and late fees (totaling about USD 10,000) on a Tibetan refugee in detention for having entered Nepal without proper documentation. (Note: Cases for ten others similarly detained were also filed and are on the court docket.) The court made no mention of the penalty fees (ranging from USD 65 to over USD 500) the Department of Immigration has also levied on the detainees.

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GOVERNMENT IMPOSES CONDITIONS FOR RELEASE  
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¶3. (SBU) On August 24 Director of Immigration Lok Bahadur Khatri contacted poloff to say the 11 detained refugees will be released from detention provided they pay all penalty fees (totaling more than USD 3000) and agree to drop the remaining cases pending before the Appellate Court. Khatri noted the decision had been taken after the Ambassador brought up the Tibetans' plight to the Prime Minister.

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REACTIONS FROM OFFICE OF TIBET, UNHCR  
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¶4. (C) Office of Tibet Representative Wangchuk Tsiring told poloff he believes his Office has no option but to scrape together enough money to pay the penalty fees and withdraw the appeals. The actual amount to be paid may be substantially lower than USD 3000, he speculated, as the woman freed August 22 had almost half of her penalty reduced on the basis of time served. He has already asked his lawyer to contact the Department of Immigration to get firsthand details of the terms for the detainees' release. Meanwhile, he is attempting to raise privately the money needed to pay the fines.

¶5. (C) UNHCR Representative Michel Dupoizat told DCM that paying the penalty fees for individuals of concern to the UNHCR--such as these detainees--sets an undesirable precedent. Dupoizat argues that the problem of transient Tibetans is a systemic one that needs a larger, procedural remedy. The Department of Immigration, moreover, assesses such fees arbitrarily and inconsistently, Supang Sguansaitgul, UNHCR's Deputy Representative, noted.

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COMMENT  
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¶6. (C) We agree with UNHCR that paying the fees sets an undesirable precedent. The Government of Nepal has attracted considerable heat from our Embassy and others for detaining the refugees and for assessing such hefty and unjustifiable fees for their liberty. The Appellate Court apparently agrees that the fees are unreasonable; hence its order to the

Department of Immigration to justify them. By letting the detainees go after paying just the penalty fee, the Department of Immigration avoids a potentially protracted court battle and more unfavorable publicity while still maintaining the face-saving position that the detentions were justified responses to violations of Nepali law.

MALINOWSKI